

PHILLIP S. MAHONEY

IBLA 75-366

Decided September 26, 1975

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-48554.

Set aside and remanded.

1. Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases:  
Stipulations

Where the reasons given for rejection of an oil and gas lease offer are that several archeological sites, possibly other such archeological sites, and scenic values of certain lands might be endangered by oil and gas development, but the field report relied upon does not delineate the archeological sites and fails to describe the scenic values that would be affected, the decision may be set aside and the case remanded for further investigation to determine if oil and gas leasing could be allowed with protective stipulations, or, if not, to substantiate the basis for rejection.

APPEARANCES: Harold L. Mai, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Phillip S. Mahoney has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated January 29, 1975, rejecting his noncompetitive oil and gas lease offer filed pursuant to Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(c) (1970). The stated reasons for rejection are the lands applied for in T. 40 N., R. 85 W., 6th P.M., Wyoming, lie in an area containing known archeological sites and the conditions present indicate a potential for yet-to-be-found archeological sites. Some of the land is said to have scenic qualities

which would be negatively affected by oil and gas development. The decision points out that Executive Order 11593 prohibits federal agencies from taking any actions that might result in destruction of cultural resources of historic significance.

Appellant asserts that as a long time resident in near proximity to the land involved and in view of his familiarity with the surrounding area and its geological conditions, he is capable of evaluating the land. Appellant refers to the remoteness of the subject land in relation to existing towns. He maintains it is at least 20 miles from the nearest paved road and there is no tourist attraction in the area. He states it is difficult to conclude there would be any negative effect on the scenic qualities, because exploration of the land would not detract from the topographic qualities and because it is not a tourist area. Appellant maintains he has walked the area many times and avers that there are no arrowheads or other artifacts on the land. He admits there are some tepee rings about a mile and a half south, but nothing closer. Further, he adds that he owns a lease in the same township and range, the issuance of which has not resulted in any adverse affects.

The report from the Bureau's District Office at Casper, Wyoming, upon which the decision is based, states as follows:

The District Archeologist and Platte Resource Area recreation planner conducted a preliminary inventory of oil and gas lease application W-47627 (Tr. 40 N., R. 85 W., Sec. 14, N 1/2 S 1/2, SW 1/2, SW 1/4 SE 1/4; Sec. 23, W 1/2 W 1/2; Sec. 26, W 1/2 NW 1/4, SE 1/4 NW 1/4; and, Sec. 27, N 1/2) on October 15, 1974.

Two archeological sites (AR-49-06-168 and AR-49-06-169) were located by this reconnaissance. Both of these sites are of a size and nature that preservation is recommended. Both sites are large but very fragile surface sites which would be destroyed by any surface disturbance such as that associated with oil and gas exploration. The total area of this lease application was not inventoried; however, the conditions are such (water, shelter, similarity to known high value sites, etc.) that a high number of significant sites would be expected.

The lands described in the lease application are an integral part of the unique scenic qualities found in the Red Wall area. The scenery is dominated by massive and colorful erosional landforms: The Red Wall

and The Gray Wall. The lands are easily accessible (sic) to the general public and are near a major access route to the South Big Horns. Developments accompanying oil and gas exploration would seriously depreciate the scenic qualities of this area.

We recommend that this area not be leased at this time to insure the preservation and protection of scenic qualities and both known and unknown cultural resource values within this area and the surrounding areas.

[1] The above report is mostly a general statement with few details to support the conclusions. It does not sufficiently delineate the two archeological sites actually found and assumes other areas may have potential for archeological findings.

Before a final determination is made to lease or not to lease the land in question, there should be consideration of the oil and gas potential. This should be weighed with other factors and considerations. It is not clear that there was consideration as to whether the land could be leased with protective stipulations which might militate against rejection of the instant application. Therefore, we return the case record to the Wyoming State Office, BLM, for further investigation and more precise descriptions of the areas where there might be archeological sites or where the scenic values might be endangered. Upon completion of said investigation, BLM will determine whether it is desirable to lease the land for oil and gas with protective stipulations and, if so, will designate the appropriate stipulations for execution by the offeror. If the land is not to be leased, the offer should be rejected with clearly stated reasons substantiated by a field report.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case record is remanded to the Bureau of Land Management for further action consistent with this opinion.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Joseph W. Goss  
Administrative Judge

